

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

v.

Case No. 2:19-cr-72-FtM-60NPM

COREY MORALES,

Defendant.

**ORDER DENYING DEFENDANT’S “MOTION
FOR PRE-TRIAL SUPPRESSION HEARING AND
MEMORANDUM OF LAW IN SUPPORT THEREOF”**

This matter is before the Court on Defendant’s “Motion for Pre-Trial Suppression Hearing and Memorandum of Law in Support Thereof,” filed by counsel on June 19, 2019. (Doc. # 23). On June 27, 2019, the United States of America filed a response in opposition to the motion. (Doc. # 26). On July 10, 2019, Defendant filed a reply. (Doc. # 28). On July 19, 2019, the Government filed a surreply. (Doc. # 34). The Court held a suppression hearing on August 29, 2019. After reviewing the motion, response, reply, surreply, testimony, evidence, legal arguments, court file, and the record, the Court finds as follows:

Factual Background

The facts are largely undisputed. On or about February 3, 2019, Fort Myers Police Department officers conducted a traffic stop based on a suspended license plate. Defendant was a passenger in the vehicle at the time of the stop. Law enforcement officers requested that Defendant get out of the vehicle. Officer Kaiser then asked Defendant to put his back to the car for a patdown. At that time,

Defendant fled on foot. A firearm was located near where Defendant fled, although officers did not locate Defendant again on February 3rd.

In his Motion, Defendant concedes that he was legally seized as a passenger at the time of the traffic stop. However, Defendant argues that the attempted frisk was illegal because Officer Kaiser did not have a reasonable suspicion that he was armed and dangerous. Defendant contends that because the attempted frisk was illegal, all evidence derived from the attempted frisk must be suppressed.

Legal Standard

“The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the Government, and its protections extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002). As one exception to the warrant requirement, law enforcement officers can stop and briefly detain a person for investigative purposes “if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). As previously mentioned, Defendant does not challenge the legality of the traffic stop. Rather, he only challenges the validity of the attempted frisk.

“To justify a pat down of . . . a passenger during a traffic stop. . . the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.” *Arizona v. Johnson*, 555 U.S. 323, 326 (2009). Courts do not require “definitive evidence of a weapon or absolute certainty that an individual is

armed” to justify a frisk. *United States v. Griffin*, 696 F.3d 1354, 1359 (11th Cir. 2012). When reviewing whether an officer possessed the necessary reasonable suspicion to conduct a frisk, courts must consider the totality of the circumstances. *Arvizu*, 534 U.S. at 273. This examination “allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them . . .” *Id.* “Great deference is given to the judgment of trained law enforcement officers on the scene.” *United States v. Packer*, 375 F.3d 1271, 1276 (11th Cir. 2003). Importantly, the Court should only consider “the facts available to the officer at the moment of seizure.” *Terry*, 392 U.S. at 21-22.

Analysis

Upon review, the Court finds that suppression is not warranted because Officer Kaiser had a reasonable suspicion that Defendant was armed and dangerous prior to the attempted frisk. The Court initially finds Officer Kaiser’s testimony to be highly credible, and notes that Defendant did not present any testimony or evidence to contradict Officer Kaiser’s testimony. At the suppression hearing, the Court viewed body camera video from the stop, which further supports Officer Kaiser’s testimony as to the encounter.

According to Officer Kaiser, Defendant avoided direct eye contact with him. During the encounter, Defendant had a free hand on his waistband, leading Officer Kaiser to believe that he was attempting to conceal a weapon. Defendant also hesitated and continued to look around suspiciously while exiting the car, leading

Officer Kaiser to believe that Defendant was looking for an escape route.

Considering the totality of the circumstances and giving due deference, these observations support the conclusion that Officer Kaiser possessed a reasonable suspicion that Defendant was armed and dangerous. Consequently, Defendant's "Motion for Pre-Trial Suppression Hearing and Memorandum of Law in Support Thereof" is hereby **DENIED**.

DONE and **ORDERED** in Chambers, in Fort Myers, Florida this 17th day of September, 2019.



TOM BARBER
UNITED STATES DISTRICT JUDGE